



# In the Supreme Court

OF THE  
**United States**

OCTOBER TERM, 1940

No. 591

- Supreme Court, U. S.

FILED

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CHARLES ELMORE CROPLEY  
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PACIFIC NATIONAL BANK OF SAN FRANCISCO,  
a national banking association, et al.,

*Petitioners,*

vs.

MERCED IRRIGATION DISTRICT,

*Respondent.*

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## PETITIONERS' REPLY BRIEF

in Support of Petition for Writ of Certiorari to the United States  
Circuit Court of Appeals for the Ninth Circuit.

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## Subject Index

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|  | Page |
|--|------|
| I. The lack of findings of fact on the issue of fairness was adequately raised below.....                                      | 2    |
| II. The rule of American etc. Life Ins. Co. v. City of Avon Park (decided November 25, 1940) is directly applicable here ..... | 3    |
| III. Conclusion .....  | 5    |

## **Table of Authorities Cited**

---

|  | <b>Page</b> |
|--|-------------|
| American United Mutual Life Insurance Company v. City of<br>Avon Park, Florida, ... U.S. ..., 9 Law Week., p. 4027.. | <b>4</b>    |

### **Rules**

|   |          |
|---|----------|
| Federal Rules of Civil Procedure, Rule 52(A)..... | <b>2</b> |
|---|----------|

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VS.

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The brief of respondent in opposition to our petition for writ of certiorari discusses two matters in a manner which we believe requires brief comment.

## I.

**THE LACK OF FINDINGS OF FACT ON THE ISSUE OF FAIRNESS WAS ADEQUATELY RAISED BELOW.**

At page 6 of the Brief for Respondent it is said:

“Furthermore, it does not appear in the petition that petitioners seasonably raised the point which they now urge with greatest emphasis, i. e., that the finding that the plan was ‘fair, equitable and for the best interest of its creditors’ was not a finding of fact.

In the opinion of the Circuit Court there is no such indication. In the District Court in the formal objections made by petitioners to the signing of the findings of fact the proposed finding of fairness is objected to (R. 196) and the claim is made that the evidence fails to sustain it (R. 198), but it is not objected that it is not a finding of fact.”

The answer is plain. In the first place,

“Requests for findings are not necessary for purposes of review.” (*Federal Rules of Civil Procedure*, Rule 52(a), in part.)

It is true, as stated by respondent, that “in the opinion of the Circuit Court there is no such indication” (that we raised the objection below that the finding concerning fairness was inadequate). The fact is, however, that the question, whether the general finding of fairness is sufficient, was dealt with at length, (a) in our briefs in the Circuit Court of Appeals, (b) in the oral argument before that Court, and (c)

in a supplementary memorandum filed by us after the oral argument (at the request of the Circuit Court of Appeals), devoted solely to the question whether the general finding of fairness is sufficient.

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## II.

### **THE RULE OF AMERICAN ETC. LIFE INS. CO. v. CITY OF AVON PARK (Decided November 25, 1940) IS APPLICABLE HERE.**

Respondent's brief says at page 10:

"The record is definite that negotiations were openly, fairly and honestly conducted and the bondholders themselves (not a committee or fiscal agent) with an able, disinterested study of the State University before them, decided the issue by referendum (R. 499) in glaring contrast with the method condemned by this court in *American etc. Life Ins. Co. v. City of Avon Park* decided November 25, 1940. Here there is not a suggestion of coercion, oppression or fraud."

This statement of respondent should not obscure the following facts:

(a) The Chairman of the Bondholders' Committee, which participated in the formulation of the plan confirmed below, was a representative of the Bank of America. That corporation was not only a bondholder but also, through subsidiaries, was heavily involved in the district as a mortgagee of lands therein, and actually owned over 3000 acres of land in the district.



(b) The consent to the plan here involved consisted solely of the consent of Reconstruction Finance Corporation. The plan is based directly on, and follows the terms of, that Corporation's loan to the district. It is shown at length in our petition and supporting brief that that Corporation occupies a position far different from, and indeed hostile to, the position occupied by the objecting bondholders.

The foregoing matters are dealt with in our petition and supporting brief, at pages 15 to 16, 17 to 20, 27 to 29 and 71 to 84.

It is, we believe, apparent from what appears in our petition and supporting brief that the rule of *American United Mutual Life Insurance Company v. City of Avon Park, Florida*, decided November 25, 1940, .....U. S. ...., 9 U. S. Law Week., p. 4027, and of the decisions there cited, is directly applicable here.

## III.

## CONCLUSION.

Other matters discussed in the brief of respondent are, we believe, sufficiently dealt with in our petition and supporting brief.

Dated, San Francisco, California,  
December 14, 1940.

Respectfully submitted,

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